IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4266 OF 2004
IN
FIRST APPEAL NO.1704 OF 2002

Shri Bhikaram Kacharu Shete & Ors. ... Applicants

Vs.

Sou. Vijaya @ Vithabai R. Shirsath ... Respondent

Mr. M.M. Sathaye for the applicants.

Mr. Uday Warunjikar for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 24TH MARCH, 2005.

P.C.:-

1. The respondents in the instant first appeal have filed this civil application praying that applicants 5 and 6 who are respondents 5 and 6 in the appeal be permitted to sell their shares in Survey No.41B and 43/2 at Lam Road, Mouje Belatgavan, Taluka and District Nashik and Survey No.237A/32, Plot No.32, at Mouje Deolali, Nashik Road, Taluka and District Nashik, more particularly described in paragraphs 1A, 1B and 1C of the plaint in Special Civil Suit No.250 of 1995. The suit is filed by the opponent Sou. Vijaya @ Vithabai Ramesh Shirsath. In the plaint, it is admitted by the said Vijaya Shirsath that she is claiming her share in the property of her father Kacharu. She has further stated that there is already a partition between Kacharu, Dagu,

Pandharinath and Ramchandra and she has impleaded applicants 3 to 6 who are respondents 3 to 6 in the appeal merely because there should be no technical difficulty. She is, however, not claiming any share in their properties. Applicants 5 and 6 want to sell their undivided share in the suit property to applicant 4 - Dagu Sahadu Shete. It is stated that an interim order was passed by this court on 4/12/2002 on Civil Application No.4464 of 2002, which reads thus:

> "Heard Advocate for the Appellant.
>
> Considering the fact disclosed in the application, the same is allowed in terms of prayer clause-11(a). Liberty to the respondent to move for modification of this order for justifiable reason if any.
>
> Application stands disposed of."

2. Nobody was representing the applicants/respondents when the order was passed. By reason of this order, applicants 5 and 6 are prevented from selling their undivided share. The learned counsel for the applicants states that since applicants 5 and 6 are not claiming any share in the property of Kacharu and since, Kishor, the son of deceased Ramchandra, is in financial difficulties, this civil application is made praying that applicants 5

and 6 may be permitted to sell their undivided share to applicant 4 Dagu.

3. The learned counsel for the applicants states that applicants 5 and 6 are prepared to file necessary undertaking in this court that in case, a partition decree is passed in favour of Sou. Vijaya then at the time of partition, by metes and bounds, they will not claim any equity in the partition. The undertaking bearing thump impression of applicant 5 and signature of applicant 6 dated 24/3/2005 and signed and identified by the learned advocate for the applicants is taken on record and marked 'X'.

4. In view of this, applicants 5 and 6 are permitted to sell their undivided share in the suit property to applicant 4 Dagu.

5. Civil application is disposed of in the aforestated terms.

6. In case any clarification is required, parties are at liberty to approach this court.

7. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)